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Abstract

The Pennsylvania Nonpublic Elementary and Secondary Education Act, signed into law in June 1968, made Pennsylvania the first State legally powered to give direct public aid to nonpublic schools. Such schools ccntain about one-fcurth cf the State's elementary and secondary school enrollment. Aid is restricted tc teachers' salaries and to textbocks and instructional materials in the fields of mathematics, modern foreign languages, physical education, and physical science. Teacher certification must be approved by the State and standardized tests are required of students to insure quality. No public school funds are used. Instead, certain State revenues from horse and harness racing are used. The positions taken by other States regarding aid tc nonpublic schools are discussed in additicn to the specific problems of the Pennsylvania school situation. (DE)

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THE PENNSYLVANIA NONPUBLIC ELEMENTARY AND SECONDARY EDUCATION ACT - PIONEER AND PRECEDENT

BY

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Commission of the State"

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THE PENNSYLVANIA NONPUBLIC ELEMENTARY AND SECONDARY EDUCATION ACT - PIONEER AND PRECEDENT

Not since Thaddeus Stevens' time has controversy and opposition swelled to the extent that witnessed the legislative effort to enact Act 109, the Pennsylvania Nonpublic Elementary and Secondary Education Act. There were enthusiastic supporters and adamant oppositionists. But, the Governor signed this Act on June 19, 1968, thereby making Pennsylvania the first state in the Nation legally empowered to give direct public aid to nonpublic education. While we are awaiting results of a court case as to the constitutionality of this Act, machinery has been developed to fulfill the purpose of the Act.

The Pennsylvania Nonpublic Elementary and Secondary Education Act (PNESEA) authorizes the Superintendent of Public Instruction to contract for the purchase of secular educational services from nonpublic schools located in the Commonwealth, in addition to establishing governing rules and regulations. It provides that certain revenues from State harness racing and State horse racing shall go into a separate and special fund (Nonpublic Elementary and Secondary Education Fund) for the financing of all activity under the Act. No public school funds may be involved.

About $4.5 million will be available for distribution during 1969-70 and when flat racing becomes fully operative in the state,

this amount could reach $20 million per year.

The Act provides that costs of secular educational services will be limited to teachers' salaries, textbooks and instructional materials, in the fields of mathematics, modern foreign languages, physical education and physical science. The Superintendent of Public Instruction approves textbooks and other instructional materials, employed in the instruction hereunder, and he must insure that a satisfactory level of performance is attained through standardized testing.

Teacher certification standards are imposed as a condition for payment under PNESEA. After five years following the effective date of the Act, it must be shown that the secular educational service for which payment is sought was rendered by a teacher holding certification approved by the Department of Public Instruction as equal to Commonwealth standards for teachers in the public schools. A person, who on July 1, 1968, was a full time teacher in a nonpublic school is considered, for purposes of the Act, to come within this certification requirement.

Requests for payment for secular educational service rendered are made on DPI forms. Any nonpublic school administrator seeking payment must maintain such accounting procedures so as to establish that it actually expended, in support of such service, an amount of money equal to the amount of money for which payment is sought.

Such accounts are subject to audit by the Auditor General and must be validated by the Department of the Auditor General.

Secular educational services which payments are made for must have been rendered prior to payment by the Superintendent of Public Instruction. He is to make payments in four equal installments - - on the first day of September, December, March, and June of the school term following the school term in which the secular educational services were rendered.

The administrative office for implementing the Act was established early in July of 1968 with a mandate from the Superintendent of Public Instruction to develop workable rules and regulations. As all other projects initiated and developed by the department, the Office for Aid to Nonpublic Education published in January, of this year, rules and regulations together with necessary forms, and compiled files of supplemental materials for the administration and implementation of Act 109.

Nearly one-fourth of the students of the Commonwealth are in nonpublic schools. While most of these are in Catholic schools, similar schools are also conducted under the Jewish, Protestant, Friends and other denominations.

While the financial plight of nonpublic schools began to gain prominence only in recent years, little consideration has been given to the complex and significant structure nonpublic schools have

represented in the total educational program of our youth. The same factors which projected the public schools into the forefront of citizen concern have also spotlighted the financial distress of the nonpublic schools. This became apparent when citizens, educators and others determined that financial concern for the nonpublic schools was inescapable.

One of the major objectives of the Act is that the program would not be a give-away or a gratuity. The objective was to establish a procedure for proper dispensing of funds available so that quality educational service could be purchased from nonpublic schools for Commonwealth students in those schools.

The Office for Aid to Nonpublic Education sent 1,670 nonpublic schools in the state preliminary information. These schools were requested that if eligible, they should submit their initial and succeeding documents for participation under the provisions of the Act. A total of 1,340 schools filed a letter of declaration of intent to participate. Out of this number, 147 schools elected not to participate or failed to file preliminary documents with the Department as of March 1, 1969. Only 15% of the initial 1,340 were declared ineligible because they represented nurseries, kindergartens, business schools, trade schools, tutorial schools, reading consultant institutions, special education institutions or correspondence schools. A total of 1,193 institutions representing an

enrollment of 537,429 filed claims as of March 1, 1969, totaling $16,833,884.32.

Since the amounts available are only about one-fourth of the amounts requested, the Act provides that proportionate amounts be paid during 1969-70.

Of the number of applicants, 1,116 were parochial schools with an enrollment of 516,534, and these institutions claimed $12,603,415. Seventy-seven other nonpublic schools with an enrollment of 20,895 claimed $4,230,468.81. A review of documents indicated that the salaries claimed by parochial institutions were distinctly lower per teacher than salaries claimed for the independent schools. In fact, the average parochial school claim for salaries per teacher was $2,500 while the average salary claimed for other nonpublic schools was over $7,000.

While Pennsylvania's effort to purchase secular educational service from nonpublic schools was unique, a review of legislation nationally shows that 26 states prohibit or permit no aid to nonpublic schools. The statutes of eight states permit or provide textbooks to nonpublic students. Twenty-seven states permit or provide nonpublic school students on public school buses. Six states provide auxiliary service and five states have tuition grants available for nonpublic elementary and secondary school students.

Since the establishment of the Office for Aid to Nonpublic Education, that office has sent information regarding Act 109 to 27 states and has been in close communication with six - - Michigan, Indiana, Connecticut, New Hampshire, Illinois, and Massachusetts, all of which have or are considering proposals for assistance to their nonpublic schools. In fact, on June 4, 1969, the Connecticut legislature approved and sent to the Governor a bill providing state aid to nonpublic schools. The Connecticut bill was modeled in some respects after Pennsylvania's efforts.

Since there was no precedent and since Act 109 was new in Pennsylvania, educational criteria generally had to be changed. Rules and regulations had to implement rather than interpret a law which contained some provisions which were not compatible with other educational endeavors.

Study by legislators when Act 109 was being formulated indicated that havoc and chaos could result if currently enrolled nonpublic school students would suddenly seek enrollment in public schools. Presently there are 1,629 nonpublic schools in the Commonwealth of Pennsylvania with a professional staff of 20,765 representing an enrollment of 570,200 children.

Taking an average public school tuition of $750 and multiplied by the 570,220 nonpublic school students shows that an expenditure of $427,665,000 would be necessary now if these students were enrolled

in public schools. Of course, other costs are not included such as school plants and facilities, maintenance and a series of other services inherent in public education. In a related matter, a recent survey conducted by our Office for Aid to Nonpublic Education indicates that in the 1969-70 school year, more than 20,000 students now enrolled in nonpublic schools will transfer to public school systems.

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Some of the difficulties experienced in the administration of Act 109 include the following:

1. The present law requires four equal payments, but practical application of this concept is incompatible and impossible. Perhaps a more feasible method would be two equal payments and one adjusted final payment.

2. The law mandates that the Superintendent of Public Instruction shall measure the level of academic performance through the administration of standardized tests, but Pennsylvania does not provide for such testing of public school pupils.

3. References in the Act regarding the payment for professional services provided by the Office for Aid to Nonpublic Education need to be further clarified. The law stipulates that no tax monies shall be expended in the implementation of the Act. This is restrictive and curtails the services available from existing professional

personnel and limits the acquisition of such services.

4. The provisions for permanent certification for nonpublic school teachers who shall have been on an institution's roster as of July 1, 1968 is a weakness. Currently noncertificated "nonpublic school teachers" who now enjoy permanent certification under the "grandfather clause" should be required to pursue courses or indulge in other professional training in order to up-date their permanency.

5. The Act implies control principally through the approval of textbooks, standardized test requirements and the auditing of funds, but the concept of state control is a matter of consternation among participating nonpublic schools. However, other than three built in controls - - quality control insured by standardized testing, secularity control (the prohibition against including religious dogma in secular education) and fiscal control (the mandated responsibility directed to the Auditor General to review special accounts) - - no effort is intended to advise, change, or recommend to any nonpublic school how such institution should be administered or operated.

6. While the law refers to the audit of funds, basically, it is intended that no funds, per se, but accounts be subject to audit.

7. Act 109 provides for the purchase of secular educational service but does not make clear how computations are made, principally

in the elementary or nondepartmentalized areas of a school's curriculum. It was necessary to determine rules of thumb to insure uniform and equitable computation by the inclusion of reasonable and workable formulae in appropriate amounts in these areas. Such formulae will insure uniformity and permit ease of auditing.

8. The law indicates that <u>any</u> nonpublic school is eligible and, consequently, enables proprietary or heavily-endowed institutions to compete for funds on the same basis as other institutions who need funds for survival.

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The initial documents which nonpublic schools submitted to the Office contained a minimal amount of error. This was due primarily to a number of instructional seminars which we conducted throughout the Commonwealth to assist nonpublic schools' administrators in the completion of existing and required forms. The forms purposefully are simple and computer-compatible and may be optically scanned for immediate statistical results.

The Office for Aid to Nonpublic Education currently has a coordinator, a curriculum development specialist and a school business management advisor, together with two clerk stenographers. It appears that the staff, while small, is qualified to fully service Act 109 for the current 1968-69 school year. But this staff will

prove totally inadequate to carry out all the functions required under the law.

Ever since Governor Shafer signed Act 109 in June, 1968, litigation has been anticipated. On June 3, 1969 suit was filed in the U. S. District Court in Philadelphia questioning the constitutionality of Pennsylvania's financial aid to nonpublic schools. Six organizations and three individual taxpayers were represented in the challenge. The suit filed asked for a hearing before a three-judge panel so that any appeal would go directly to the U. S. Supreme Court. Plaintiff organizations are the Pennsylvania State Education Association, the Pennsylvania Conference of the National Association for the Advancement of Colored People, the Pennsylvania Council of Churches, the Pennsylvania Jewish Community Relations Conference, Americans United for Separation of Church and State and the American Civil Liberties Union of Pennsylvania.

Much has been written about this Act and it appears improper for me to discuss the constitutionality of this legislation. We will leave that to the courts.